

**CRIMINAL POSSESSION OF STOLEN PROPERTY  
IN THE FOURTH DEGREE  
(Anhydrous ammonia or liquified ammonia gas)  
Penal Law § 165.45(7)  
(Committed on or after Oct. 1, 2005)**

The (*specify*) count is Criminal Possession of Stolen Property in the Fourth Degree.

Under our law, a person is guilty of Criminal Possession of Stolen Property in the Fourth Degree when that person knowingly possesses stolen property, with intent to benefit himself or herself or a person other than an owner thereof or to impede the recovery by an owner thereof, and when the property consists of anhydrous ammonia or liquified ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquified ammonia gas to manufacture amphetamine.<sup>1</sup>

The following terms used in that definition have a special meaning:

A person KNOWINGLY possesses stolen property when that person is aware that he or she is in possession of property and is aware that such property is stolen.<sup>2</sup>

POSSESS means to have physical possession or otherwise to exercise dominion and control over tangible property.<sup>3</sup>

PROPERTY means any money, personal property or thing

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<sup>1</sup> See Penal Law § 155.30(11) for the definition of larceny of such materials.

<sup>2</sup> See Penal Law § 15.05(2).

<sup>3</sup> See Penal Law §10.00(8). Where constructive possession is alleged, insert the appropriate instruction as found in the "Additional Charges" section at the end of this article.

of value.<sup>4</sup>

STOLEN PROPERTY is property that has been wrongfully taken, obtained, or withheld from an owner by a person who did so with the intent to deprive another of such property or to appropriate such property to himself or herself or a third person.<sup>5</sup>

INTENT means conscious objective or purpose.<sup>6</sup> Thus, a person acts with intent to benefit himself or herself or a person other than an owner of property or to impede the recovery of property by an owner when that person's conscious objective or purpose is to do so.

Under our law, a person who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or herself or a person other than an owner thereof or to impede its recovery by an owner thereof.<sup>7</sup> This means that, if the People have proven beyond a reasonable doubt that the defendant knowingly possessed stolen property, you may, but you are not required to, infer from that fact that the defendant possessed it with the intent to benefit himself/herself or a person other than an owner thereof or to impede its recovery by an owner thereof.

An OWNER means a person having a right to possession

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<sup>4</sup> See Penal Law § 155.00(1), for the full definition of "property." If the property in issue is "computer data" or a "computer program," and those terms need to be defined for the jury, see Penal Law § 156.00(2) and (3).

<sup>5</sup> See Penal Law § 155.05(1).

<sup>6</sup> See Penal Law § 15.05(1).

<sup>7</sup> See Penal Law § 165.55(1).

of the property superior to that of the person who possesses it.<sup>8</sup>

*[NOTE: Add if appropriate:*

It is not a defense to this charge:

*(Select appropriate alternative[s]:*

that the person who stole the property has not been convicted, apprehended, or identified.<sup>9</sup>

*and/or*

that the defendant stole or participated in the theft of the property.<sup>10</sup>

*and/or*

that the theft of the property did not occur within this state.)]<sup>11</sup>

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), knowingly possessed stolen property;
2. That the defendant did so with the intent to benefit himself/herself or a person other than the owner of

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<sup>8</sup> See Penal Law § 155.00(5), which has been modified for this crime. Also see that section for special definitions of “owner” to cover the situations (1) where the alleged owner obtained the property by theft, (2) where the alleged owner is a joint or common owner of the property, and (3) where the property is in the possession of the alleged owner but some other person has a security interest in the property.

<sup>9</sup> See Penal Law § 165.60(1).

<sup>10</sup> See Penal Law § 165.60(2).

<sup>11</sup> See Penal Law § 165.60(3).

such property or to impede the recovery of such property by its owner; and

3. That the stolen property consisted of anhydrous ammonia or liquified ammonia gas which the defendant intended to use, or knew that another person intended to use, to manufacture methamphetamine.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

*[NOTE: If the corroboration requirement of Penal Law § 165.65 applies, a corroboration charge must be given.]*